

E-FILED on 7/7/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

B&O MANUFACTURING, INC.,

Plaintiff,

v.

KML CORPORATION,

Defendant.

No. C-06-01535 RMW

ORDER DENYING KML'S APPLICATION
FOR RIGHT TO ATTACH ORDER AND
ORDER FOR ISSUANCE OF WRIT OF
ATTACHMENT

[Re Docket Nos. 7-10, 12-18]

Defendant KML Corporation applies for orders allowing it to attach property of plaintiff B&O Manufacturing, Inc. For the reasons set forth below, the court denies the application.

I. BACKGROUND

KML makes laminated boards. B&O builds shelving, and, prior to this lawsuit, used KML boards to do so. Kohl's Department Stores was a major customer of B&O.

On February 28, 2006, B&O initiated this action against KML, alleging that KML's breach of contract caused B&O to lose Kohl's as a customer. KML counterclaimed for the unpaid balance on boards it had shipped to B&O. KML now seeks to attach property of B&O to cover KML's alleged damages.

II. ANALYSIS

KML claims that California Code of Civil Procedure § 485.220 governs its application. Mem. Supp. (dkt. # 8) at 2. While KML generally has the standard correct, the governing code section is actually § 484.090(a), which requires a court to find all of the following before granting an application:

- (1) The claim upon which the attachment is based is one upon which an attachment may be issued.
- (2) The plaintiff has established the probable validity of the claim upon which the attachment is based.
- (3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
- (4) The amount to be secured by the attachment is greater than zero.


Cf. § 485.220(5) (requiring finding that "[t]he plaintiff will suffer great or irreparable injury" before granting *ex parte* application). "A claim has 'probable validity' where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." § 481.190.

Given the scant and conflicting evidence about why the relationship between KML and B&O soured, *compare* Richardson Decl. with Calleja Decl., KML's claims do not at this time appear to have "probable validity" within the meaning of California Code of Civil Procedure § 481.190. KML's application is therefore denied

III. ORDER

For the foregoing reasons, the court denies KML's application for right to attach order and order for issuance of writ of attachment.

DATED: 7/7/06



RONALD M. WHYTE
United States District Judge

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 **Dated:** 7/7/06

/s/ JH
Chambers of Judge Whyte